

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 IO-13 ABF-01 OMB-01 TRSE-00

L-03 SP-02 PM-04 CIAE-00 INR-07 NSAE-00 /044 W

-----041728Z 129461 /41

P 041641Z MAY 77

FM USMISSION NATO

TO SECSTATE WASHDC PRIORITY 3390

SECDEF WASHDC PRIORITY

INFO USDOCOCENT BRUNSSUM NL

AMEMBASSY LONDON

USCINCEUR VAIHINGEN GER

USNMR SHAPE BE

AMEMBASSY THE HAGUE

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E.O. 11652: N/A

TAGS: MARR NATO

SUBJECT: NETHERLANDS WATER POLLUTION TAXES ON AFCENT

REF: (A) SECSTATE 062703, 212317Z MAR 77, (B) USNATO

1651, 231641Z MAR 77, (C) MBC-M(77)46, (D) MBC-R(77)6

1. PO/77/67 (TEXT IN PARA 3, BELOW) REPRESENTS ANOTHER STEP IN THE CONTINUING EFFORT TO RESOLVE THE ISSUE OF THE NETHERLANDS GOVERNMENT WATER POLLUTION LEVY AFFECTING AFCENT HQS AND NATIONAL CIVILIAN/MILITARY PERSONNEL DOMICILED WITHIN NETHERLANDS. THE MILITARY BUDGET COMMITTEE (MBC) HAS DISCUSSED THE LEVY ON SEVERAL OCCASIONS, BUT WAS UNABLE TO AGREE WHETHER THE LEVY WAS A TAX OR A CHARGE WITHIN THE PROVISION OF ARTICLE 10 OF THE STATUS OF FORCES AGREEMENT (LONDON 1951) AND ARTICLE 8 OF THE PROTOCOL ON THE STATUS OF HEADQUARTERS (PARIS 1952).

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2. PO/77/67 RECOMMENDS THAT PRIOR TO A DECISION ON THE ISSUE, PERM REPS TASK NATIONAL EXPERTS ON INTERNATIONAL LAW TO DEVELOP (A) AN ACCEPTED DEFINITION OF THE TERMS "DUTIES AND TAXES" AND "CHARGES FOR SERVICES RENDERED", AND (B) AN AGREED MEANING OF "FORM OF TAXATION (DEPENDENT) UPON RESIDENCE OR DOMICILE". IT ALSO SUGGESTS THAT THEY CHOOSE BETWEEN CONTINUING THE RESPONSIBILITY

FOR RESOLVING THE ISSUE IN: (A) THE MBC ASSISTED BY NATIONAL EXPERTS IN INTERNATIONAL LAW; OR (B) BY FORMING AN OPEN-ENDED WORKING GROUP OF SUCH EXPERTS CHAIRED BY THE NATO LEGAL ADVISOR.

3. BEGIN TEXT OF PO/77/67:

TO: PERMANENT REPRESENTATIVES (COUNCIL)
FROM: ACTING SECRETARY GENERAL

CLARIFICATION OF ARTICLES 10 OF THE AGREEMENT ON THE STATUS OF FORCES (LONDON 1951) AND 8 OF THE PROTOCOL ON THE STATUS OF HEADQUARTERS (PARIS 1952)

A LETTER FROM THE NETHERLANDS GOVERNMENT ON THE WATER POLLUTION LEVY WAS DISTRIBUTED, FOR INFORMATION, AT THE REQUEST OF THE NETHERLANDS PERMANENT REPRESENTATIVE, UNDER REFERENCE PO/77/43 DATED 22ND MARCH, 1977.

2. WHEN THIS MATTER CAME UP, CAUSING MUCH CONCERN TO AFCENT AND TO STAFF MEMBERS NOT OF NETHERLANDS NATIONALITY, SACEUR ASKED THAT THE GENERAL PROBLEM OF EXEMPTION FROM DUTIES, LEVIES AND TAXES AS PROVIDED FOR IN ARTICLE 10 OF THE AGREEMENT ON THE STATUS OF FORCES AND ARTICLE 8 ON THE STATUS OF HEADQUARTERS, SHOULD BE RAISED AT THE HIGHEST LEVEL AND WITHIN THE BROADEST CONTEXT.

3. THIS REQUEST SEEMS PARTICULARLY APPROPRIATE AS SEVERAL ALLIANCE COUNTRIES ARE AT PRESENT THINKING OF LIMITED OFFICIAL USE

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INTRODUCING LEVIES AND TAXES SIMILAR TO THE WATER POLLUTION LEVY.

4. THIS BEING THE CASE, IT MIGHT PROVE EXTREMELY USEFUL - IN ORDER TO AVOID LENGTHY EXCHANGES OF VIEW BETWEEN THE HEADQUARTERS AND THE NATIONAL AUTHORITIES CONCERNED, OR DISAGREEMENT BETWEEN THE CONTRACTING PARTIES, OVER THE ABOVE - MENTIONED INTERNATIONAL TREATIES - TO OBTAIN A RECOGNIZED AND ACCEPTED DEFINITION OF THE TERMS "DUTIES AND TAXES NOT INCLUDING CHARGES FOR SERVICES RENDERED" AND "ANY FORM OF TAXATION (DEPENDENT) UPON RESIDENCE OR DOMICILE" AS USED IN THE ABOVE-MENTIONED AGREEMENTS.

5. THE CLARIFICATIONS REQUESTED SHOULD LOGICALLY BE PROVIDED BY THE CONTRACTING PARTIES TO THE AGREEMENT ON THE STATUS OF FORCES AND TO THE PARIS PROTOCOL WHO ARE ALL REPRESENTED ON THE NORTH ATLANTIC COUNCIL.

6. TO ENABLE THE COUNCIL TO TAKE A DECISION ON THIS

MATTER IN FULL KNOWLEDGE OF THE FACTS, I WOULD SUGGEST THAT PRELIMINARY CONSIDERATION OF THE CORRECT INTERPRETATION COULD BE UNDERTAKEN EITHER:

(1) IN THE MILITARY BUDGET COMMITTEE WHICH HAS ALSO HAD TO DEAL WITH THE PROBLEM OF THE WATER POLLUTION LEVY IMPOSED ON AFCENT HEADQUARTERS AND ON PRIVATE HOMES. TO THIS END, THE MILITARY BUDGET COMMITTEE COULD BE ASSISTED, ON AN OPEN-ENDED BASIS, BY NATIONAL EXPERTS (E.G. ONE PER MEMBER COUNTRY) WHO SHOULD BE LEADING AUTHORITIES ON INTERNATIONAL LAW;

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(2) OR BY AN OPEN-ENDED WORKING GROUP, CONSISTING SOLELY OF NATIONAL EXPERTS (E.G. ONE PER COUNTRY) WITH THE SAME STANDING AS THOSE REFERRED TO IN SUB-PARAGRAPH (1) ABOVE, WHICH WOULD BE CHAIRED BY THE NATO LEGAL ADVISER.

7. THE TASK OF THE REINFORCED MILITARY BUDGET COMMITTEE OR OF THE HIGH-LEVEL WORKING GROUP CONSTITUTED IN THE ABOVE MANNER WOULD BE TO DEFINE:

(A) THE DISTINCTION BETWEEN "DUTIES AND TAXES" AND "CHARGES FOR SERVICES RENDERED";

(B) THE EXACT MEANING OF "FORM OF TAXATION (DEPENDENT)

UPON RESIDENCE OR DOMICILE".

8. THE COUNCIL IS INVITED TO CHOOSE BETWEEN ONE OF THESE TWO PROPOSALS.

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(SIGNED) P. PANSA CEDRONIO

END OF TEXT.

4. COMMENT: REFS A AND B DISCUSS POTENTIAL LONG RANGE COSTS TO NATO BUDGETS SHOULD THE NETHERLANDS SUCCEED IN HAVING ITS WATER POLLUTION LEVY RULED NOT TO BE A TAX UNDER THE TERMS OF THE STATUS OF FORCES AGREEMENT. WE ARE AWARE THAT OTHER HOST NATIONS ARE WATCHING THIS CASE FOR POSSIBLE APPLICATION IN THEIR OWN COUNTRIES. WE BELIEVE, THEREFORE, THAT THE ISSUE SHOULD BE STUDIED BY THE MBC, SUITABLY REINFORCED BY NATIONAL EXPERTS IN INTERNATIONAL LAW, IN ORDER TO ENSURE FULL COGNIZANCE OF THE FINANCIAL IMPACT OF THEIR DECISION. END COMMENT.

5. ACTION REQUESTED: CONCURRENCE IN COURSE OF ACTION PROPOSED. BENNETT

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